IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6229 OF 2005

Ali Akbar Hassan Bagwan ..Petitioner

versus

Ashalata V. Kandane & Ors. ..Respondents

Mr. V. S. Gokhale for the Petitioner.

Mr. S. N. Chandrachood for the Respondents.

CORAM : D. G. DESHPANDE, J.

DATE : 7TH FEBRUARY, 2007

P.C. :

1. Heard Advocate for the Petitioner and the Respondents.

2. Petitioner filed a suit for an injunction against the respondents restraining them from constructing boundary wall in front of the suit premises and for further injunction not to evict the petitioner - plaintiff from the suit premises. The defendants - respondents raised objection to the maintainability of the suit on the ground that the Small Causes Court had no jurisdiction to entertain

the said suit. That application was allowed and objection was upheld and hence this petition.

3. Counsel for the petitioner tried to rely upon amended Section 26 of the Provincial Small Cause Courts Act, 1887, as amended by Maharashtra Act No. XXIV of 1984, and, particularly section 26, which reads as under:

> **Suits or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immoveable property and licence fees or rent, except those to which other Acts apply, to lie in the Court of Small Causes.- (1)** Notwithstanding anything contained elsewhere in this Act, but subject to the provisions of sub-section (2), the court of small causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immoveable property situated in the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery of the licence fee or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings.
>
> (2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immoveable property of licence fee or charges of rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Beng. LVII of 1947), the Bombay Government Premises (Eviction) Act, 1955 (Bom. II of 1955) the Bombay Provincial Municipal Corporations Act, 1949

> (Bom. LIX of 1949) or the Maharashtra Housing and Area Development Act, 1976 (Mah. XXVIII of 1977), or any other Law for the time being in force, apply.

4. A bare reading of Section 26, will clearly show that the jurisdiction of the Small Causes Court is in respect of recovery of possession of immoveable property. It may be that the petitioner claims to be in possession of immoveable property, but the suit simplicitor for injunction will not go before the Small Causes Court. The order of the trial court is not required to be interferred with. It is perfectly according to law. Petition is dismissed.

(D.G. DESHPANDE, J.)